

DEPARTMENT OF INSURANCE**Legal Division, Special Projects Bureau**

45 Fremont Street, 21st Floor
San Francisco, CA 94105



**NOTICE OF RE-ADOPTION OF EMERGENCY REGULATIONS
PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 12921.7**

File No. ER 01018047

December 14, 2004

Special Investigative Units Regulation

California Insurance Commissioner John Garamendi hereby provides notice, pursuant to California Insurance Code Section 12921.7, that he will propose to the Office of Administrative Law the re-adoption of emergency regulation that amends the Special Investigative Units Regulation found at (Title 10, Chapter 5, Subchapter 9, and Section 2698.30 of the California Code of Regulations).

This Notice contains a description of the problem and the necessity for regulation, an explanation of the justification for the re- adoption of the regulation on an emergency basis and a copy of the regulation text.

This Notice is provided to every person, group, and association who has previously filed a request for notice of regulatory action with the Commissioner. Copies of the Notice are available at the Department of Insurance, 45 Fremont Street, 21st Floor, and San Francisco, California, 94105 and on the Department's web site at www.insurance.ca.gov.

The emergency regulation that is to be re-adopted is identical to the emergency regulation originally filed with the Secretary of State on September 4, 2003, re-adopted on January 3, 2003, April 27, 2004 and September 1, 2004. The emergency regulation to be re-adopted will be submitted to the Office of Administrative Law together with the rulemaking file not less than five (5) working days after the mailing of this Notice, as required by California Insurance Code Section 12921.7. Questions regarding this Notice should be directed to:

California Department of Insurance
Legal Division, Special Projects Bureau
Attn: Debra A. Chaum
45 Fremont Street, 21st Floor
San Francisco, California 94105
(415) 538-4115

DESCRIPTION OF PROBLEM AND NECESSITY FOR REGULATION

As set forth in the previous documents [File No. ER 01018047] the cost of fraud to the people of the State of California is extensive; it is estimated that the cost of insurance fraud committed annually in the area of worker's compensation insurance is between \$1-3 billion dollars. Automobile insurance fraud costs each consumer an additional two hundred dollars per policy of

automobile insurance every year. These costs of insurance fraud are borne both directly by the individual policyholder and indirectly by the consumer as the costs of goods and services increase to accommodate the higher premiums paid by businesses. Currently, California law addresses the issue of deterrence and detection of such insurance fraud through a statutory scheme. California Insurance Code Section 1872.50 requires that every insurer admitted to do business in the state shall maintain a unit or division to investigate possible fraudulent claims; these units are referred to as Special Investigative Units or alternatively, SIU's. The previous regulations (found at California Code of Regulations, Title 10, Chapter 5, Subchapter 9) governed the establishment, maintenance and oversight of Special Investigative Units. These regulations were originally filed with the Secretary of State in May 3, 1994.

After the enactment of the previous regulations, the California Department of Insurance, Fraud Division implemented a plan to examine the activities of the Special Investigative Units and determine if insurance carriers had complied with all provisions of the regulations. This oversight activity revealed that the regulations were seriously flawed, contained vague and ambiguous language and most critically failed to provide specific guidance to insurance carriers that would enable them to implement the regulations and statutes. To address this situation, the Insurance Commissioner adopted the emergency regulation referenced above. The emergency regulation was originally filed with the Secretary of State on September 4, 2003 and re-adopted on January 3, 2004. The emergency regulation that is to be readopted, herein, is identical to the emergency regulation initially filed with the Secretary of State on September 4, 2003, re-adopted on January 3, 2004 and subsequently re-adopted April 27, 2004 and September 1, 2004.

The emergency regulation is unchanged from the emergency regulation initially filed in this matter and provides for specified staffing levels for the SIU, a uniform standard for insurers to utilize in determining when to refer suspected fraud to the Department and specific content requirements and procedures for the referral of suspected fraud to the Fraud Division or other law enforcement agencies required by statute and sanctions for the failure to comply with these regulation.

JUSTIFICATION FOR RE-ADOPTION AS EMERGENCY REGULATIONS

On September 1, 2004 the Commissioner issued a Notice of Proposed Action setting forth proposed permanent regulations regarding special investigative units that are intended to replace the existent emergency regulations regarding special investigative units.. Pursuant to the Notice a public hearing was held and public comment was received. Additionally, on September 20, 2004 the California Legislature enacted legislation that is now codified at California Insurance Code Section 1875.24. This legislation specifically authorizes the Insurance Commissioner to impose monetary penalties for violations of statute and regulations regarding special investigative units and further directs the Insurance Commissioner to adopt regulations to implement this statute. In view of this statutory directive, the Commissioner has determined that it is a necessary and efficient use of resources to incorporate the regulations regarding penalties for violating statutes and regulations regarding special investigative units into the existent rulemaking proceeding regarding special investigative units. The Commissioner anticipates issuing a fifteen day notice of changed text within the next few weeks to reflect the incorporation of penalties regulations into the originally noticed rulemaking proceeding.

In order to make certain that the existent emergency regulations regarding special investigative units remains in full force and effect until the changes required by California Insurance Code Section 1875.24 are in place, it is necessary to re-adopt the emergency regulations that are presently in place.

TEXT OF THE PROPOSED EMERGENCY REGULATIONS

The text of the proposed regulation remains unchanged from the previous version of the emergency regulations issued on September 1, 2004.

Dated:

JOHN GARAMENDI
Insurance Commissioner

By: _____
Debra A. Chaum
Senior Staff Counsel